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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/587,197	06/05/2000	Jack O. Cartner	CRT 2 0017	8327
7590	12/13/2002		EXAMINER	
Jay F Moldovanyi Fay Sharpe Fagan Minnich & McKee LLP 1100 Superior Avenue Seventh Floor Cleveland, OH 44114-2518			PETRAVICK, MEREDITH C	
			ART UNIT	PAPER NUMBER
			3671	

DATE MAILED: 12/13/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/587,197	CARTNER, JACK O.
	<b>Examiner</b>	<b>Art Unit</b>
	Meredith C Petrvick	3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 18 October 2002.

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 1-5,7-25,38-40,44 and 47-49 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-5,7-25,38-40,44 and 47-49 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 6/5/00 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.

4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_.

**DETAILED ACTION**

**NOTE:** As per applicant's request in the letter of October 18, 2002, the After Final Amendment filed August 16, 2002 was not entered and the amendment filed October 17, 2002 was entered.

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 44 and 47 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The claims contain the limitation that the angle between the front side and one of the sides of the deck is formed between **about** the 12 o'clock and 2 o'clock positions. This is not disclosed in the original specification or drawings.

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 49 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 49 states "a deck having five sides, four of which are perpendicular in relation to each other" It is geometrically impossible to have four sides, which are all perpendicular to every

other side. It is assumed for the purpose of examination on the merits that applicant means that two sides were parallel to each other and the other two sides are perpendicular to those two sides. This forms a box shape. Correction is required.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-2, 5-10, 13, 15-16, 18-19, 23-24, 38-40, 44, 47 and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thagard et al. in view of the prior art as picture in Figure. 2A of the specification

Thagard discloses the claimed invention including:

- a deck (172) having at least three sides and at least one side wall
- at least one cutting blade (240) mounted on the deck
- a guard assembly (360) that includes an actuating member/ holding member (380) and a guard (366) on the front of the mower
- a movable rubber flap (364, Column 8, line51-52) depends from the guard on a different plane
- a hinge 163 extending along the guard assembly

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However, Thagard fails to disclose providing the guard along two of said at least three sides of the deck with two of the sides being normal and a third side being at an obtuse angle to the others.

As shown in Figure 2A, a mower deck is known that has a guard that extends at an obtuse angle along two sides of the deck.

It would have been obvious to one having ordinary skill in the art at the time the invention made to put the guard with its hinge of Thagard along two of the side of the deck at an obtuse angle as shown in the prior art Figure 2A, in order to provide better access to the mower blade when cutting brush.

In regards to claim 2, 7, 10 and 19 the actuating member is a hydraulic cylinder and piston (382). The actuating member is mounted to the deck and guard spaced from a hinge.

In regards to claim 8, 15 and 23-24 a top surface of the deck and a portion of a top surface of the guard are in the same plane and a portion not in the same plane (Fig. 3).

6. Claims 1, 3, 4, 9, 11-12, 13-14, 16-18, 20, 21, 24-25 and 48-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gullett 4,378,668 in view of Thagard.

Gullett discloses a mower head (see attached drawing) including:

- a deck (14) having at least four sides
- side walls
- a guard (24) attached by hinges
- an actuating member (23, 27)

The hinges extended at an obtuse angle from two other sides of the mower deck (see attached drawing). However, Thagard discloses a rigid wall attached to the guard instead of a flap.

Like Gullett, Thagard discloses a mower with a guard (360). Unlike Gullett, Thagard makes the downward wall on the guard a flap (364). This allows the flap to fold inward in the raised position so that cutting blades are further exposed and the mower may be used in for cutting operations.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to replace the guard of Gullett a flap with a guard as in Thagard, in order to provide a movable guard that still protect the operator from debris.

In regards to claims 3 and 20, the deck of Gullett further comprises a flap (22) depending from a sidewall.

In regards to claim 4, the back wall of the guard is straight. The front wall has a plurality of curved sections. (Fig. 1)

In regards to claim 30, the guard is attached to the deck by a hinge (33).

In regards to claims 11 and 21, one of the sides (20) has a plurality of angled sections.

In regards to claims 13-14, some of the sidewalls are rigid and some are flaps (22).

In regards to claims 16-18 and 24, the top surface of the guard and the top surface of the deck are in different planes. (Fig. 2)

In regards to claims 17 and 25, an extension protrudes under the guard. (Fig. 2)

***Response to Arguments***

7. Applicant's arguments filed 10/17/02 have been fully considered but they are not persuasive.

Claims 1-5, 7-25, 38-40, 44 and 47-49 are pending. Applicant amended claims 1, 7, 9, 18, 44 and 47 and added claims 48-49.

First, with regards to the rejection of claims 44 and 47, applicant argues that the drawings disclose the angle being about 12 o'clock and provides a marked up drawing. However, the markings are not on the originally filed drawings and the drawings only discloses an exact angles not an "about" angles. The specification only discloses the angle as being exactly 12 o'clock. Therefore, this rejection remains.

Second, in regards to the rejection of the claims as being unpatentable over Thaguard in view of Prior Art Figure 2A and in regards to the rejection of the claims as being unpatentable over Gullet in view of Thaguard, applicant argues that these combinations do not discloses the newly added limitation. Contrary to applicant's argument, the combinations do disclose the new limitation as pointed out in detail in the rejections above and with regards to the attached drawing.

Finally, new claims 48-49 are rejected as detailed above.

Therefore, for the reasons given above, the claims remain rejected.

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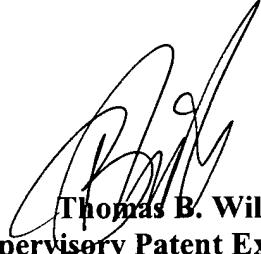
***Conclusion.***

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Meredith Petravick whose telephone number is 703-305-0047.

The examiner can normally be reached on Monday-Thursday from 7:00 a.m. – 4:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached at 703-308-3870.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the group receptionist whose telephone number is 703-305-1113. The fax number for this Group is 703-305-3597.



Thomas B. Will  
Supervisory Patent Examiner  
Group Art Unit 3671

MCP  
December 12, 2002